

petitions to deny by TVL, ACL, or THL. Neither did Havens demonstrate in his Supplement that any of those persons has standing to be heard in the instant matter. Havens did not demonstrate that the public interest would be served in any way by hearing from any of those persons. Accordingly, none of those persons should be admitted to the above captioned proceeding. Because it cannot be ascertained which portions of Haven's filing were contributed by non-parties TVL, ACL, or THL so that those portions can be isolated and stricken, the Commission should dismiss the entire pleading as having been filed by unauthorized persons.

Havens's Supplement was based entirely on his incorporation by reference of unspecified documents which he suggests may be in the Commission's records. Havens failed to serve a copy of any of those purported documents on Mobex. Havens even admits that he believes that he has not seen some or all of the purported documents. If Havens has any such documents, he did not cite to any new fact contained therein to support his bald conclusions.

In the absence of any new material fact presented in Havens's Supplement, Mobex denies Havens's unsupported conclusions that Mobex engaged in lack of candor and deception in Commission licensing, and Mobex denies that it ever made any false statement to the Commission punishable under 18 U.S.C. §1001 or 47 U.S.C. §503. Mobex denies that its legal counsel ever violated 47 C.F.R. §§1.24(a)(2)-(4) in their representation of Mobex.

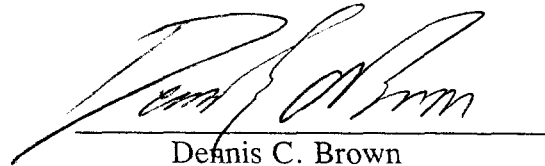
Havens abused the Commission's processes by his strike filing. Havens has filed a petition to deny Mobex's application for consent for transfer of control of Mobex, file number

0001885281. In his petition, Havens demanded that the Commission resolve all pending matters prior to acting on Mobex's transfer of control application. Havens presented no new material fact in his Supplement and explained no reason why he needed to file the vacuous pleading at this time. In view of the absence of any material fact in Havens's Supplement, and in view of the timing of its submission with respect to Havens's protest of Mobex's transfer of control application, the Commission should conclude that Havens's obvious purpose was not to supplement the record in the above captioned matter, but rather, to delay the Commission's grant of consent to transfer of control of Mobex. The Commission should not tolerate such a strike filing.

Conclusion

For all the foregoing reasons, the Commission should dismiss or deny Havens's Supplement and grant renewal of the license for station KAE889 and should take appropriate action against Havens's filing of a strike pleading.

Respectfully submitted,
MOBEX NETWORK SERVICES, LLC



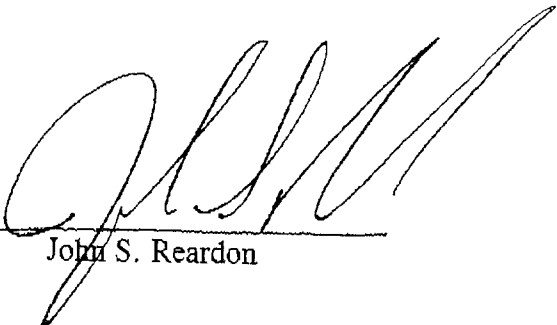
Dennis C. Brown

8124 Cooke Court, Suite 201
Manassas, Virginia 20109-7406
703/365-9436

Dated: December 6, 2004

DECLARATION

I declare under penalty of perjury that the foregoing is true and correct. Executed on
December 6th, 2004.



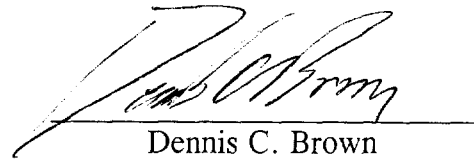
John S. Reardon

CERTIFICATE OF SERVICE

I hereby certify that on this sixth day of December, 2004, I served a copy of the foregoing Opposition to Supplement to Petition to Deny on the following person by placing a copy in the United States Mail, first-class postage prepaid:

Warren C. Havens
2649 Benvenue Avenue, Suite 2
Berkeley, California 94704

Warren C. Havens
2649 Benvenue Avenue, Suite 3
Berkeley, California 94704



Dennis C. Brown

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED
DEC - 6 2004
Federal Communications Commission
Office of Secretary

| | | |
|---------------------------------|---|----------------------------|
| In the Matter of |) | |
| |) | |
| Mobex Network Services, LLC |) | |
| |) | |
| Application for Renewal for |) | File No. 0001600664 |
| AMTS Stations on the Erie Canal |) | Call Sign KCE240 |
| |) | (the "Erie Canal License") |

Marlene H. Dortch, Secretary
Federal Communications Commission
Attention: Chief, Wireless Telecommunications Bureau

OPPOSITION TO SUPPLEMENT TO PETITION TO DENY

Mobex Network Services, LLC (Mobex), by its attorney, hereby respectfully files its Opposition to the supplement to petition to deny (Supplement) filed in the above captioned matter by Warren C. Havens (Havens), Telesaurus-VPC, LLC (TVL); AMTS Consortium, LLC (ACL); and Telesaurus Holdings GB, LLC (THL). In support of its position, Mobex shows the following.

The Commission's Rules do not authorize the filing of a supplement to a petition to deny, Fidelity Television, Inc., 11 FCC Rcd 6766 (1996), and the Commission has dismissed such unauthorized pleadings, *id.* Havens did not request leave to file his Supplement or to present any reason why it should be accepted. Accordingly, Havens's Supplement should be dismissed without consideration.

Havens attempted to introduce as parties persons which did not file timely petitions to deny Mobex's above captioned application. The Commission has no record of the timely filing of

petitions to deny by TVL, ACL, or THL. Neither did Havens demonstrate in his Supplement that any of those persons has standing to be heard in the instant matter. Havens did not demonstrate that the public interest would be served in any way by hearing from any of those persons. Accordingly, none of those persons should be admitted to the above captioned proceeding. Because it cannot be ascertained which portions of Haven's filing were contributed by non-parties TVL, ACL, or THL so that those portions can be isolated and stricken, the Commission should dismiss the entire pleading as having been filed by unauthorized persons.

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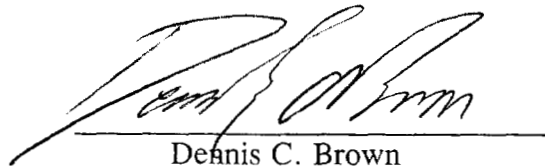
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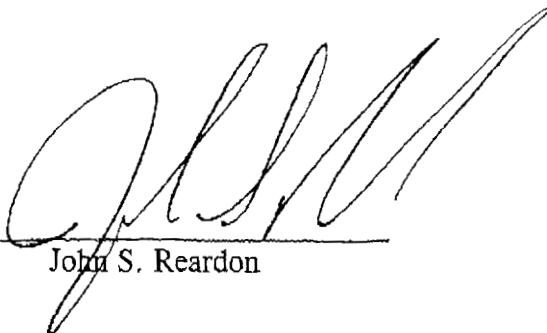
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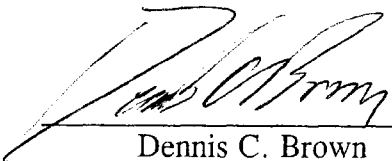
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Dennis C. Brown

SPECTRUM ENFORCEMENT -
Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20545

ORIGINAL

sent. safety

In the Matter of

RECEIVED

NATIONAL SCIENCE AND
TECHNOLOGY NETWORK, INC.

LICENSE COMMUNICATION
SERVICES, INC.

Licensees of Various Land Mobile Radio
Stations Located in Los Angeles and Orange
Counties, California

RECEIVED - FCC

DEC 17 2004

Federal Communication Commission
Bureau / Office

To: Chief, Wireless Telecommunications Bureau,
Federal Communications Commission

REQUEST TO INITIATE A §403 INQUIRY

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Written statements made by NSTN in a brief recently submitted in a case before the U.S. Court of Appeals for the D.C. Circuit^{1/} indicate that both NSTN and LCSI have intentionally lacked candor with the Commission, in violation of §1.17 of the Commission's rules. *See* 47 C.F.R. §1.17. Specifically, NSTN recently admitted, in its brief, that Alan M. Lurya is and has been an officer of

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NSTN.^{2/} Both LCSI and NSTN have failed to disclose to the Commission that Lurya is an officer of NSTN, even when this fact was relevant to issues raised against them before the Commission.

In June of 2000, MRA filed an Informal Objection against two applications filed by NSTN, FCC File Nos. D141773 and D141774, and one application filed by LCSI, FCC File D141775. NSTN and LCSI were seeking authorizations for temporary fixed stations at the same three locations, operating on between 7 and 30 channels per station, and serving tens of thousands of mobile units. MRA presented facts in the Informal Objection which indicated that LCSI was an alter ego of NSTN and, as such, was assisting NSTN in creating a chilling effect on the issuance of co-channel licenses to anyone else in the same market. By doing so, NSTN and LCSI would eliminate any impediments to future grants to them of licenses for permanently fixed centralized trunked (FB8) stations. Thus, NSTN and LCSI would effectively obtain exclusive rights to, collectively, fifty 450-470 MHz channels.

NSTN and LCSI each responded to the Informal Objection. In the July 6, 2000 Response submitted by LCSI, Lurya stated that he is an officer of LCSI, and that LCSI does not own any interest in NSTN and NSTN does not own any interest in LCSI. In its July 7, 2000 Response, NSTN stated that Lurya, although NSTN's counsel, was the sole operator of LCSI, and that NSTN and LCSI were separate and unrelated corporations. Neither NSTN nor LCSI mentioned the fact that Lurya was an officer of NSTN.

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Nor is it relevant that NSTN and LCSi might, hypothetically, be capable of rebutting this presumption. Lurya's officer position at NSTN was clearly relevant and material to the inquiry, and NSTN and LCSi purposely hid the fact of Lurya's officer status to avoid having to address the issue. That is a classic example of lack of candor.

Indeed, even if the fact being hidden is not itself a disqualifying defect, the decision to hide it from the Commission is grounds for character disqualification.^{4/} In *Algreg I* and *Algreg II*, the Commission held that Alee Cellular Communications ("Alee") was not qualified to hold a cellular license for the New Mexico 3 RSA because Alee lacked candor with the Commission regarding an alien ownership interest in the company. While the alien ownership interest itself was ultimately held not to be disqualifying, Alee's intentional concealment of that relevant information was deemed disqualifying.^{5/} The U.S. Court of Appeals affirmed the Commission's decision revoking Alee's license for lack of candor, finding that the evidence supported the Commission's determination that

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Alee knowingly and intentionally withheld relevant information from the Commission and thus the sanction imposed by the Commission was warranted .^{6/}

Therefore, MRA submits that NSTN's and LCSI's intentional lack of candor with the Commission , in violation of §1.17 of the rules, warrants an inquiry, pursuant to §403 of the Act, into NSTN's and LCSI's qualifications to be Commission licensees.

Respectfully submitted,

MOBILE RELAY ASSOCIATES

December 17, 2004

By: 

David J. Kaufman
Lorretta K. Tobin

Its Attorneys
Brown Nietert & Kaufman, Chartered
1301 Connecticut Avenue, Suite 450
Washington, D.C. 20036
(202) 887-0600

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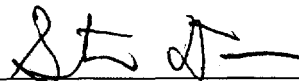
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I, Steve Denison, a paralegal at the law firm of Brown Nietert & Kaufman, Chartered, hereby certify that I have caused a copy of the foregoing **"REQUEST TO INITIATE A §403 INQUIRY"** to be sent by first class mail, postage prepaid, this 17th day of December, 2004, to each of the following:

- * John B. Muleta, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW, Room 3-C252
Washington, D.C. 20554
- * Michael J. Wilhelm, Chief
Public Safety & Critical Infrastructure Division
Federal Communications Commission
445 12th Street, SW, 4th Floor
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National Science & Technology Network, Inc.
Attn: Ted S. Henry
P.O. Box 250013
Los Angeles, CA 90025

License Communication Services, Inc.
Attn: Mr. Alan M. Lurya
17662 Irvine Blvd., Suite 18
Tustin, CA 92780



Steve Denison

*Via Hand Delivery

FCC COPY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of)
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NATIONAL SCIENCE AND)
TECHNOLOGY NETWORK, INC.)
)
LICENSE COMMUNICATION)
SERVICES, INC.)
)
Licensees of Various Land Mobile Radio)
Stations Located in Los Angeles and Orange)
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RECEIVED - FCC

DEC 17 2004

Federal Communication Commission
Bureau / Office

To: Chief, Wireless Telecommunications Bureau,
Federal Communications Commission

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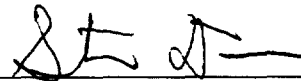
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This Commission generally considers two corporations with overlapping officers to be related to each other. Thus, for example, in auctions, a bidder seeking "designated entity" status is

^{2/} NSTN, through a legal pleading signed only by its attorney, Lurya, filed a petition for reconsideration with the Commission years ago, wherein NSTN requested an extension of time to construct certain other NSTN stations. MRA argued, in its Court of Appeals brief, that this informal extension request was invalid because it was not submitted on the proper FCC form and it was not signed by the licensee (*i.e.*, NSTN), but, rather, by the licensee's outside attorney, contrary to Commission rules. In order to counter MRA's arguments, NSTN stated that Lurya is and has been an officer of NSTN, and therefore the petition for reconsideration containing the extension request had indeed been signed by an "officer" of NSTN at the time.

required to include not only its own gross revenues, but also the gross revenues of all other corporations with officers or directors in common. *See* 47 C.F.R. §1.2110. This Commission has generally presumed that corporations with overlapping officers are related corporations.^{3/}

Nor is it relevant that NSTN and LCSi might, hypothetically, be capable of rebutting this presumption. Lurya's officer position at NSTN was clearly relevant and material to the inquiry, and NSTN and LCSi purposely hid the fact of Lurya's officer status to avoid having to address the issue. That is a classic example of lack of candor.

Indeed, even if the fact being hidden is not itself a disqualifying defect, the decision to hide it from the Commission is grounds for character disqualification.^{4/} In *Algreg I* and *Algreg II*, the Commission held that Alee Cellular Communications ("Alee") was not qualified to hold a cellular license for the New Mexico 3 RSA because Alee lacked candor with the Commission regarding an alien ownership interest in the company. While the alien ownership interest itself was ultimately held not to be disqualifying, Alee's intentional concealment of that relevant information was deemed disqualifying.^{5/} The U.S. Court of Appeals affirmed the Commission's decision revoking Alee's license for lack of candor, finding that the evidence supported the Commission's determination that

^{3/} *See, e.g.,* Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Fifth Report and Order*, 9 FCC Rcd 5532, 5619-20 ¶¶202-206, and 5622 ¶209 (1994); Application of PVT Networks, Inc.; Request for Waiver of Sections 1.2110(b) and 101.1209(e), *Order*, 16 FCC Rcd 19105, 19108 (2000). *See, also*, Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Second Order on Reconsideration of the Third Report and Order and Order on Reconsideration of the Fifth Report and Order*, 18 FCC Rcd 10180, 10185-86 (2003).

^{4/} *See, e.g.,* Algreg Cellular Engineering, et al., *Memorandum Opinion and Order*, 12 FCC Rcd 8148, 8172-8181 (1997) ("Algreg I"), pet. for recon. denied, *Memorandum Opinion and Order and Order on Reconsideration*, 14 FCC Rcd 18524, 18533-18535 (1999) ("Algreg II"), aff'd, *Alee Cellular Communications v. FCC*, No. 99-1460 (D.C. Cir. Jan. 30, 2001), pet. for rehearing denied (D.C. Cir. Apr. 5, 2001), pet. for writ of cert. denied (S.Ct. Oct. 9, 2001).

^{5/} *See, Algreg I*, 12 FCC Rcd at 8157-76.

Alee knowingly and intentionally withheld relevant information from the Commission and thus the sanction imposed by the Commission was warranted .^{6/}

Therefore, MRA submits that NSTN's and LCSI's intentional lack of candor with the Commission, in violation of §1.17 of the rules, warrants an inquiry, pursuant to §403 of the Act, into NSTN's and LCSI's qualifications to be Commission licensees.

Respectfully submitted,

MOBILE RELAY ASSOCIATES

December 17, 2004

By: 

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^{6/} See, *Alee Cellular Communications v. FCC*, No. 99-1460, slip op. at 1 (D.C. Cir. Jan. 1, 2001).

CERTIFICATE OF SERVICE

I, Steve Denison, a paralegal at the law firm of Brown Nietert & Kaufman, Chartered, hereby certify that I have caused a copy of the foregoing "**REQUEST TO INITIATE A §403 INQUIRY**" to be sent by first class mail, postage prepaid, this 17th day of December, 2004, to each of the following:

- * John B. Muleta, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW, Room 3-C252
Washington, D.C. 20554
- * Michael J. Wilhelm, Chief
Public Safety & Critical Infrastructure Division
Federal Communications Commission
445 12th Street, SW, 4th Floor
Washington, D.C. 20554

National Science & Technology Network, Inc.
Attn: Ted S. Henry
P.O. Box 250013
Los Angeles, CA 90025

License Communication Services, Inc.
Attn: Mr. Alan M. Lurya
17662 Irvine Blvd., Suite 18
Tustin, CA 92780



Steve Denison

*Via Hand Delivery

FCC COPY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of)
)
NATIONAL SCIENCE AND)
TECHNOLOGY NETWORK, INC.)
)
LICENSE COMMUNICATION)
SERVICES, INC.)
)
Licensees of Various Land Mobile Radio)
Stations Located in Los Angeles and Orange)
Counties, California)

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DEC 17 2004

**Federal Communication Commission
Bureau / Office**

To: Chief, Wireless Telecommunications Bureau,
Federal Communications Commission

REQUEST TO INITIATE A §403 INQUIRY

Mobile Relay Associates ("MRA"), by its attorneys, hereby requests that the Commission initiate an inquiry pursuant to Section 403 of the Communications Act of 1934, as amended (the "Act"), into the qualifications of National Science and Technology Network, Inc. ("NSTN") and License Communication Services, Inc. ("LCSI") to be Commission licensees. Section 403 of the Act authorizes the Commission to initiate, on its own motion, an inquiry into any matter relating to the enforcement of the Act or the Commission's rules. *See* 47 U.S.C. §403.

Written statements made by NSTN in a brief recently submitted in a case before the U.S. Court of Appeals for the D.C. Circuit^{1/} indicate that both NSTN and LCSI have intentionally lacked candor with the Commission, in violation of §1.17 of the Commission's rules. *See* 47 C.F.R. §1.17. Specifically, NSTN recently admitted, in its brief, that Alan M. Lurya is and has been an officer of

^{1/} *See*, National Science and Technology Network Inc. v. Federal Communications Commission, Case No. 03-1376, *Reply Brief for Petitioner*, dated November 17, 2004.